

# First Principles.

NATIONAL SECURITY AND CIVIL LIBERTIES

SEPTEMBER 1977

VOL. 3, NO. 1

In This Issue: "My" Wiretap Suit,  
by Morton H. Halperin, p. 16

In The News, p. 7  
In The Courts, p. 12  
In The Literature, p. 13

## Wiretap Legislation: Past and Present

BY DAVID ATKINS

### Wiretap Reform Bill Before Congress

The Carter administration has brought with it its own legislative package for reforming the law governing electronic surveillance. Different aspects of the same issue have been batted about for the past half century, for the invention of the telephone was shortly followed by the invention of wiretapping. And wiretapping conferred a whole new police power for the overzealous to abuse. Attempts to deal with this are not new, and if we are to understand S. 1566, it must be placed in its proper context.

President Carter's revised "Foreign Intelligence Surveillance Act" (S. 1566) has provoked the same criticism that the original Ford Administration version did last year. Although the legislation would eliminate the exception in wiretap law which permits "national security" wiretaps to be legally installed without a warrant, the Carter bill has been

denounced as a "fraud" by civil liberties groups. It is labeled a "reform", but the proposal contains the kind of elastic language which will not prohibit wiretap abuse but may in fact condone it in law. Like its predecessor, S. 1566 contains a "non-criminal standard"; it allows the government to use electronic surveillance even where there is no "probable cause" to believe that the target has committed or is about to commit a crime. Such a broad standard for surveilling citizens opens a Pandora's Box of authorized wiretapping based on political beliefs and permits the kind of discretionary electronic surveillance which reform legislation is supposed to control.<sup>1</sup>

The current debate over the specific language of wiretap reform has exposed differences even among those who genuinely favor strict controls. The bill's liberal supporters, for instance, maintain that despite its flaws, the measure is still better than nothing. What will happen, they ask, if the legislation dies and the Nixon-Burger Court rules that the Constitution does not require a judicial warrant for "national security" or "foreign intelligence" wiretapping?

*Mr. Atkins, a student at Columbia University, has been an Intern with the Project on National Security & Civil Liberties.*

*It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to first principles.*

THOMAS PAINE